

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15066 of 703 Maryland Avenue Corp., pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing structure which now exceeds the allowable lot occupancy and does not meet the rear yard requirements [Paragraphs 2001.3(a), (b) and (c)], a variance from the rear yard requirements (Sub-section 404.1), and a variance from the allowable lot occupancy requirements (Sub-section 403.2) for a second story addition to an existing single-family dwelling in an R-4 District at premises 703 Maryland Avenue, N.E., (Square S-893, Lot 3).

HEARING DATE: July 21, 1989
DECISION DATE: July 28, 1989, September 6, 1989 and
July 11, 1990

RECONSIDERATION

INTRODUCTION:

The Board voted to deny the application at its Public Meeting of July 28, 1989. On August 24, 1989, counsel for the applicant filed a motion for reconsideration of the Board's decision. At its Public Meeting of September 6, 1989, the Board declined consideration of the motion as prematurely filed.

The Board issued its final Order denying the application on June 19, 1990. The Board concluded that the applicant had not met the burden of proof in establishing that the property is physically unique in relation to adjoining and nearby properties.

Counsel for the applicant filed a timely motion for reconsideration on June 29, 1990. In support of the motion for reconsideration, counsel for the applicant argued that the Board erred in concluding that the property is not physically unique. In support of that argument, counsel cited the testimony and evidence presented at the public hearing which evidenced that the subject property is atypical for the square due to its extremely small size and the fact that it is a through lot. In addition, the testimony evidenced that the property is improved with a structure which occupies 100 percent of the lot and, further, that the existing structure is the only one-story building in the square. Counsel noted that in Clerics of

St. Viator, Inc. v. D.C. Board of Zoning Adjustment (320 A.2d 291, 294 [DC 1974]), that the Court found that the uniqueness of a property may be found in a structure built upon the land as well as the land itself.

Counsel for the applicant stated that the extremely small size of the lot and its character as a through lot should qualify the property as "unique". However, counsel argued that with the additional consideration of the existence of a one-story structure, the only one-story building in the square, occupying 100 percent of the lot, the evidence presents an irrefutable condition of uniqueness contrary to the Board's conclusion that there was "no evidence that the property is physically unique in relation to adjoining and nearby properties."

By letter dated July 5, 1990, the Single Member District Commissioner (SMD) of ANC 6A11 opposed the motion for reconsideration. The SMD Commissioner argued that the motion presented no new evidence. The Board notes that Section 3332.4 of the Zoning Regulations provides that a motion for reconsideration specify the respects in which the final Order of the Board is claimed to be erroneous, the grounds of the motion and the relief sought. Section 3332.6 of the Zoning Regulations precludes the consideration of a request for rehearing by the Board unless new evidence is submitted which would not reasonably have been presented at the original public hearing. Counsel for the applicant is not requesting a rehearing in the instant case.

Upon review of the motion, response thereto, the transcript of the proceedings and its final Order, the Board concludes that its determination that there was no evidence that "the property is not physically unique in relation to adjoining and nearby properties" is not supported by the evidence of record. At its Public Meeting of July 11, 1990, the Board voted to reconsider its decision in the subject application and finds as follows:

FINDINGS OF FACT:

1. The property is located on the south side of Maryland Avenue between 7th and 8th Streets and is known as premises 703 Maryland Avenue, N.E. It is zoned R-4.

2. The property is a through lot and is irregular in shape. The lot has a frontage of 24.81 feet along Maryland Avenue and a frontage of 22.0 feet along D Street. The depth of the property is 46.21 feet on the eastern lot line and 34.74 feet along the western lot line. The lot area of the site is 890.45 square feet.

3. The triangular square in which the subject site is located is split-zoned R-4 and C-2-A. The subject lot is

immediately adjacent to the commercially zoned property in the square to the east of the site. The property to the west of the site is zoned R-4. The site is located within the Capitol Hill Historic District.

4. At the time of the applicant's purchase of the subject property, the site was improved with a one-story structure which occupied 100 percent of the lot. The existing one-story structure was occupied by a commercial palm reader. The premises was vacated in 1983.

5. The applicant proceeded to renovate the premises for use as a single-family dwelling. The original work on the project proceeded with proper permits for work on the first floor and basement levels. However, the replacement of the existing facade and construction of a second story was initiated without the proper permits. A stop work order was issued and construction discontinued prior to its completion. The applicant is now seeking approval to proceed with the renovation of the structure and the completion of the second story addition.

6. The subject site contains 890.45 square feet of lot area which is 909.55 square feet or 50.5 percent shy of the minimum lot area of 1,800 square feet for a row dwelling in the R-4 District.

7. The rear yard of the existing structure on a through lot is measured as one-half the width of D Street or 17.5 feet. The minimum rear yard requirement for the R-4 District is twenty-feet.

8. The R-4 District provides for a maximum lot occupancy of sixty percent or 534.27 square feet. The existing structure occupies 100 percent of the site.

9. The proposed renovation and addition will not change the footprint of the existing one-story structure. The proposed addition will result in a height of approximately twenty-five feet for two stories. The R-4 District permits a maximum height of forty feet or three stories.

10. The property is located within the Capitol Hill Historic District. The proposed project received conceptual approval from the Historic Preservation Review Board in June, 1987.

11. The applicant's architect testified that the proposed second story addition will make the premises more compatible with the existing two- and three-story structures in the square.

12. The applicant's architect testified that the existing one-story structure is too small to be used as a viable single-family dwelling. The architect further testified that the property can not be reverted back to commercial use due to its R-4 zoning classification.

13. The architect further testified that demolishing the existing building to meet the strict application of the Zoning Regulations would permit a building footprint of approximately 534.27 square feet which would not be large enough to accommodate the needs for a single-family residence.

14. The record contains a petition of fifteen signatures in support of the application.

15. The Office of Planning (OP), by memorandum dated July 12, 1989, recommended that the application be denied. The OP was of the opinion that the proposed addition would substantially increase the nonconformity of the building and would impair the intent and integrity of the R-4 zone district. The OP was further of the opinion that the applicant did not meet the requisite burden of proof for approval of the requested variances.

16. Advisory Neighborhood Commission (ANC) 6A, by letter dated July 13, 1989 and by representative at the public hearing, opposed the granting of the application for the following reasons:

- a. The structure was built without proper permits and with stop work orders from inspectors.
- b. Attendees at the ANC meeting opposed the project on grounds of poor construction.
- c. Structure would not comply with building codes regarding an outside exit from the basement level.
- d. Applicant should not be rewarded for proceeding in violation of D.C. Codes and Zoning Regulations.

17. A resident of 414 - 7th Street, N.E. and member of the Stanton Park Neighborhood Association appeared at the public hearing in opposition to the application. The opposition was generally based on the following:

- a. Construction was illegal and resulted in the demolition of the facade of a structure in an historic district without proper approvals and construction of a second-story without proper building permits.

- b. The applicant did not demonstrate that the original one-story building could not be made a viable structure and be retenanted.
- c. The building, as subdivided, indicates the likelihood of office use.
- d. Approval of the application would permit the applicant to profit from violation of the law.

18. In rebuttal to the issues raised by the opposition, the applicant and the architect testified as follows:

- a. The building plans do provide for light, ventilation and egress from the basement into existing air wells.
- b. The proposed interior layout is typical for residential use, including the basement which includes a bathroom, recreation room and study.
- c. The materials used in construction meet or exceed code requirements.
- d. Construction which occurred after the issuance of the stop work order was limited to the first floor and basement levels on advice of D.C. Government employees.

19. In addressing the concerns of the opposition the Board notes that enforcement to ensure compliance with D.C. Codes and Building Regulations is beyond the scope of the Board's jurisdiction and should more properly be addressed to the D.C. Department of Consumer and Regulatory Affairs for appropriate action.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of a practical difficulty that is inherent in the property itself and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the requisite burden of proof. The property is affected by an exceptional or extraordinary condition in terms of its irregular shape, small size and the existence of a one-story structure which occupies 100 percent of the subject site. The strict application of the Zoning Regulations would

create a practical difficulty upon the owner in that no addition to the existing structure could be made without variance relief, the existing one-story structure is too small to provide a viable single-family residence and it is out of character with adjoining and nearby two- and three-story buildings. In addition, the lot would be too small to be developed in conformance with the R-4 District even if its existing improvements were razed.

The Board further concludes that the re-establishment of the structure as a viable single-family residence in character with the surrounding development is consistent with the purpose and intent of the R-4 District and can be granted without substantial detriment to the public good. Accordingly it is hereby ORDERED that the application is GRANTED.

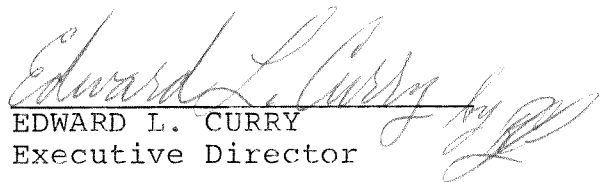
VOTE: Public Meeting of July 28, 1989-- 3-1
(Paula L. Jewell, William F. McIntosh, and Carrie L. Thornhill to deny; John G. Parsons opposed to the motion by proxy; Charles R. Norris not voting, not having heard the case).

Public Meeting of September 6, 1989-- 3-1
(Carrie L. Thornhill, William F. McIntosh and Paula L. Jewell to deny waiver to accept motion; John G. Parsons opposed to the motion by proxy; Charles R. Norris not voting, not having heard the case).

Public Meeting of July 11, 1990-- 3-1
(Carrie L. Thornhill and Paula L. Jewell to reconsider and grant; John G. Parsons to reconsider and grant by proxy; William F. McIntosh opposed to the motion; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

AUG 13 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW

2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15066order/BHS24

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15066

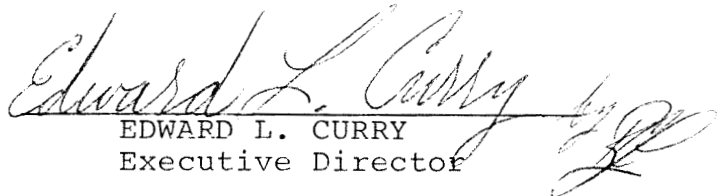
As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated AUG 13 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: AUG 13 1990